

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JAILON KULAIS, CARLOS FALCASANTOS @ “COMMANDER
FALCASANTOS,” AWALON KAMLON HASSAN @ “COMMANDER
KAMLON,” MAJID SAMSON @ “CO...**

G.R. Nos. 100901-08. July 16, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The trial court’s erroneous taking of judicial notice of a witness’ testimony in another case, also pending before it, does not affect the conviction of the appellant, whose guilt is proven beyond reasonable doubt by other clear, convincing and overwhelming evidence, both testimonial and documentary. The Court takes this occasion also to remind the bench and the bar that reclusion perpetua is not synonymous with life imprisonment.

The Case

On August 22, 1990, five Informations for kidnapping for ransom (Crim. Case Nos. 10060, 10061, 10062, 10063 and 10064) and three Informations for kidnapping (Crim Case Nos. 10065, 10066 and 10067), all dated August 14, 1990, were filed[1] before the Regional Trial Court of Zamboanga City against Carlos Falcasantos, Jailon Kulais, Jumatiya Amlani, Norma Sahiddan de Kulais, Jalina Hassan de Kamming,[2] Salvador Mamaril, Hadjirul Plasin, Jaimuddin Hassan, Imam[3] Taruk Alah, Freddie Manuel alias “Ajid,” and several John and Jane Does. The Informations for kidnapping for ransom, which set forth identical allegations save for the names of the victims, read as follows:

“That on or about the 12th day of December, 1988, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being all private individuals, conspiring and confederating together, mutually aiding and assisting one another, with threats to kill the person of FELIX ROSARIO [in Criminal Case No. 10060][4] and for the purpose of extorting ransom from the said Felix Rosario or his families or employer, did then and there, wilfully, unlawfully and feloniously, KIDNAP the person of said Felix Rosario,[5] a male public officer of the City Government of Zamboanga, who was then aboard a Cimarron vehicle with plate No. SBZ-976 which was being ambushed by the herein accused at the highway of Sitio Tigbao Lisomo, Zamboanga City, and brought said Felix Rosario[6] to different mountainous places of Zamboanga City and Zamboanga del Sur, where he was detained, held hostage and deprived of his liberty until February 2, 1989, the day when he was released only after payment of the ransom was made to herein accused, to the damage and prejudice of said victim; there being present an aggravating circumstance in that the aforecited offense was committed with the aid of armed men or persons who insure or afford impunity.”

The three Informations for kidnapping, also under Article 267 of the Revised Penal Code, likewise alleged identical facts and circumstances, except the names of the victims:

“That on or about the 12th day of December, 1988, in the City of Zamboanga and within the jurisdiction of this Honorable Court, the above-named accused, being all private individuals, conspiring and confederating

together, mutually aiding and assisting one another, by means of threats and intimidation of person, did then and there, wilfully, unlawfully and feloniously KIDNAP, take and drag away and detain the person of MONICO SAAVEDRA Y LIMEN [Criminal Case No. 10065][7] a male public officer of the City Government of Zamboanga, against his will, there being present an aggravating circumstance in that the aforecited offense was committed with the aid of armed men or persons who insure or afford impunity.”

Of the twelve accused, only nine were apprehended, namely, Jailon Julais, Jumatiya Amlani, Norma Sahiddan de Kulais, Salvador Mamaril, Hadjirul Plasin, Jainuddin Hassan, Imam Taruk Alah, Jalina Hassan and Freddie Manuel.[8]

On their arraignment on September 13, 1990, all the accused pleaded not guilty. Joint trial on the merits ensued. On April 8, 1991, Judge Pelagio S. Mandi rendered the assailed 36-page Decision, the dispositive portion of which reads:

“WHEREFORE, above premises and discussion taken into consideration, this Court renders its judgment, ordering and finding:

1. FREDDIE MANUEL, alias “AJID” and IMAM TARUK ALAH y SALIH [n]ot [g]uilty of the eight charges of [k]idnapping for [r]ansom and for [k]idnapping, their guilt not having been proved beyond reasonable doubt.

Their immediate release from the City Jail, Zamboanga City is ordered, unless detained for some other offense besides these 8 cases (Crim. Cases Nos. 10060-10067).

2. JAINUDDIN HASSAN y AHMAD, JAILON KULAI, SALVADOR MAMARIL y MENDOZA and HADJIRUL PLASIN y ALIH [g]uilty as principals by conspiracy in all these 8 cases for [k]idnapping for [r]ansom and for [k]idnapping (Crim. Cases Nos. 10060-10067).

Their guilt is aggravated in that they committed the 8 offenses with the aid of armed men who insured impunity. Therefore, the penalties imposed on them shall be at their maximum period.

WHEREFORE, for the five charges of [k]idnapping for [r]ansom, and pursuant to Art. 267 of the Revised Penal Code, five life imprisonments are imposed on Jainuddin Hassan y Ahmad, Jailon Kulais, Salvador Mamaril y Mendoza and Kadjirul Plasin y Alih (Crim. Cases Nos. 10060-10064).

For kidnapping Mrs. Virginia San Agustin-Gara, a female and public officer and pursuant to Art. 267, Revised Penal Code (par. 4.), another life imprisonment is imposed on Jainuddin Hassan y Ahmad, Jailon Kulais, Salvador Mamaril y Mendoza and Hadjirul Plasin y Alih (Crim. Case No. 10066)

For kidnapping Monico Saavedra y Limen, and Calixto Francisco y Gaspar, and their kidnapping not having lasted more than five days, pursuant to Art. 268, Revised Penal Code, and the Indeterminate Sentence Law, the same four accused - Jainuddin Hassan y Ahmad, Jailon Kulais, Salvador Mamaril y Mendoza and Hadjirul Plasin y Alih - are sentenced to serve two (2) jail terms ranging from ten (10) years of prision mayor as minimum, to eighteen (18) years of reclusion temporal as maximum (Crim. Cases Nos. 10065 and 10067).

3. JAMATIYA AMLANI DE FALCASANTOS [n]ot [g]uilty in the three charges of [k]idnapping and she is acquitted of these charges. (Crim. Cases Nos. 10065, 10066 and 10067).

But Jumatiya Amlani de Falcasantos is [g]uilty as accomplice in the five charges of [k]idnapping for [r]ansom.

WHEREFORE, Jumatiya Amlani de Falcasantos is sentenced to serve five (5) imprisonments, ranging from TEN (10) YEARS of prision mayor as minimum to EIGHTEEN (18) YEARS of reclusion temporal as maximum (Crim. Cases Nos. 10060-10064).

4. NORMA SAHIDDAN DE KULAI, 18 years old, and JALIHA HUSSIN (charged as Jalina Hassan de

Kamming), 15 years old, [n]ot [g]uilty in the three charges for [k]idnapping and are, therefore, ACQUITTED of these three charges. (Crim. Cases Nos. 10065, 10066 & 10067).

But Norma Sahiddan de Kulais and Jalina Hussin are found [g]uilty as accomplices in the five charges for [k]idnapping for [r]ansom. Being minors, they are entitled to the privileged mitigating circumstance of minority which lowers the penalty imposable on them by one degree.

WHEREFORE, Norma Sahiddan de Kulais and Jalina Hussin are sentenced to serve five imprisonments ranging from SIX (6) YEARS of prision correccional as minimum to TEN YEARS AND ONE (1) DAY OF prision mayor as maximum (Crim. Cases Nos. 10060-10064).

Due to the removal of the suspension of sentences of youthful offenders “convicted of an offense punishable by death or life” by Presidential Decree No. 1179 and Presidential Decree No. 1210 (of which [k]idnapping for [r]ansom is such an offense) the sentences on Norma Sahiddan de Kulais and Jaliha Hussin de Kamming are NOT suspended but must be served by them.

Januddin Hassan, Jailon Kulais, Salvador Mamaril and Hadjirul Plasin are sentenced further to return the following personal effects taken on December 12, 1988, the day of the kidnapping, or their value in money, their liability being solidary.

To Jessica Calunod:

One (1) Seiko wrist watch

P 250.00

One Bracelet

P 2,400.00

One Shoulder Bag

P 200.00

Cash

P 200.00

To Armado C. Bacarro:

One (1) wrist watch

P 800.00

One Necklace

P 300.00

One Calculator

P 295.00

Eyeglasses

P 500.00

One Steel Tape

P 250.00

To Edilberto S. Perez

One (1) Rayban

P 1,000.00

One Wrist Watch

P 1,800.00

Cash

P 300.00

To Virginia San Agustin-Gara

One (1) Wrist Watch

P 850.00

The benefit of Art. 29, Revised Penal Code, on preventive suspension, shall be extended to those sentenced.

The cases against Majid Samson, alias “Commander Bungi” Awalon Kamlon a.k.a. “Commander Kamlon” Carlos Falcasantos and several “John Does” and Jane “Does” are ARCHIVED until their arrest.

Costs against the accused convicted.

SO ORDERED.”[9]

On May 7, 1991, Jailon Kulais, Jumatiya Amlani de Falcasantos, Norma Sahiddan de Kulais and Jaliha Hussin filed their joint Notice of Appeal.[10] In a letter dated February 6, 1997, the same appellants, except Jailon Kulais, withdrew their appeal because of their application for “amnesty.” In our March 19, 1997 Resolution, we granted their motion. Hence, only the appeal of Kulais remains for the consideration of this Court.[11]

The Facts

The Version of the Prosecution

The solicitor general summarized, in this wise, the facts as viewed by the People:

“On December 12, 1988, a group of public officials from various government agencies, organized themselves as a monitoring team to inspect government projects in Zamboanga City. The group was composed of Virginia Gara, as the head of the team; Armando Bacarro, representing the Commission on Audit; Felix del Rosario, representing the non-government; Edilberto Perez, representing the City Assessor’s Office; Jessica Calunod and Allan Basa of the City Budget Office and Monico Saavedra, the driver from the City Engineer’s Office. (p. 3, TSN, October 22, 1990.)

On that particular day, the group headed to the Lincomo Elementary School to check on two of its classrooms. After inspecting the same, they proceeded to the Talaga Footbridge. The group was not able to reach the place because on their way, they were stopped by nine (9) armed men who pointed their guns at them (p. 4, TSN, *ibid.*).

The group alighted from their Cimarron jeep where they were divested of their personal belongings. They were then ordered to walk to the mountain by the leader of the armed men who introduced himself as Commander Falcasantos (p. 5, TSN, *ibid.*)

While the group was walking in the mountain, they encountered government troops which caused their group to be divided. Finally, they were able to regroup themselves. Commander Kamlon with his men joined the

others. (pp. 7-8, TSN, *ibid.*).

The kidnappers held their captives for fifty-four (54) days in the forest. During their captivity, the victims were able to recognize their captors who were at all times armed with guns. The wives of the kidnappers performed the basic chores like cooking. (pp.9-10. TSN, *ibid.*)

Commander Falcasantos also ordered their victims to sign the ransom notes which demanded a ransom of P100,000.00 and P14,000.00 in exchange for twenty (20) sets of uniform. (p.15, TSN, *ibid.*)

On February 3, 1989, at around 12:00 o'clock noontime, the victims were informed that they would be released. They started walking until around 7:00 o'clock in the evening of that day. At around 12:00 o'clock midnight, the victims were released after Commander Falcasantos and Kamlon received the ransom money. (p. 19, TSN, *ibid.*) The total amount paid was P122,000.00. The same was reached after several negotiations between Mayor Vitaliano Agan of Zamboanga City and the representatives of the kidnappers. (pp. 2, 6, TSN, Nov. 11, 1990)

x x x.”[12]

The prosecution presented fifteen witnesses, including some of the kidnap victims themselves: Jessica Calunod, Armando Bacarro, Edilberto Perez, Virginia San Agustin-Gara, Calixto Francisco, and Monico Saavedra.

The Version of the Defense

The facts of the case, according to the defense, are as follows:[13]

“On May 28, 1990, at about 10:00 o'clock in the morning, while weeding their farm in Sinaburan, Zamboanga del Sur, accused-appellant Jumatiya Amlani was picked up by soldiers and brought to a place where one army battalion was stationed. Thereat, her five (5) co-accused, namely Salvador Mamaril, Hadjirul Plasin, Jainuddin Hassin, Imam Taruk Alah and Freddie Manuel were already detained. In the afternoon of the same day, appellants spouses Jailon Kulais and Norma Sahiddan were brought to the battalion station and likewise detained thereat. On May 30, 1990, the eight (8) accused were transported to Metrodiscom, Zamboanga City. Here on the same date, they were joined by accused-appellant Jaliha Hussin.

At the time Amlani was picked up by the military, she had just escaped from the captivity of Carlos Falcasantos and company who in 1988 kidnapped and brought her to the mountains. Against their will, she stayed with Falcasantos and his two wives for two months, during which she slept with Falcasantos as aide of the wives and was made to cook food, wash clothes, fetch water and run other errands for everybody. An armed guard was assigned to watch her, so that, for sometime, she had to bear the ill-treatment of Falcasantos' other wives one of whom was armed. After about two months, while she was cooking and Falcasantos and his two wives were bathing in the river, and while her guard was not looking, she took her chance and made a successful dash for freedom. (TSN, January 29, 1992, pp. 2-15)

Likewise a kidnap victim herself is accused-appellant Jaliha Hussin, who was thirteen years old at the time (she was fifteen years old when the trial of the instant cases commenced). She was kidnapped by Daing Kamming and brought to the mountains where he slept with her. She stayed with him for less than a month sleeping on forest ground and otherwise performing housekeeping errands for Kamming and his men. She made good her escape during an encounter between the group of Kamming and military troops. She hid in the bushes and came out at Ligui-an where she took a “bachelor” bus in going back to her mother's house at Pudosa, Guiligan, Tungawan, Zamboanga del Sur. One day, at around 2:00 o'clock in the afternoon, while she was harvesting palay at the neighboring village of Tigbalangao, military men picked her up to Ticbanuang where there was an army battalion detachment. From Ticbanuang, she was brought to Vitali, then to Metrodiscom, Zamboanga City, where on her arrival, she met all the other accused for the first time except Freddie Manuel. (*Ibid.*, pp. 16-21)

Another female accused is appellant Norma Sahiddan, a native of Sinaburan, Tungawan, Zamboanga del Sur. At about 3:00 o'clock in the afternoon of a day in May, while she and her husband were in their farm, soldiers arrested them. The soldiers did not tell them why they were being arrested, neither were they shown any papers. The two of them were just made to board a six by six truck. There were no other civilians in the truck. The truck brought the spouses to the army battalion and placed them inside the building where there were civilians and soldiers. Among the civilians present were her six co-accused Hadjirul Plasin, Salvador Mamaril, Jaimuddin Hassan, Ima[m] Taruk Alah, Freddie Manuel and Jumatiya Amlani. That night, the eight of them were brought to Tictapul, Zamboanga City; then to Vitali; and, finally, to the Metrodiscom, Zamboanga City where they stayed for six days and six nights. On the seventh day, the accused were brought to the City Jail, Zamboanga City. (TSN, January 30, 1991, pp. 6-11)

The husband of Norma Sahiddan is Jailon Kulais who, as heretofore narrated, was arrested with his wife the day the soldiers came to their farm on May 28, 1990. He has shared with his wife the ordeals that followed in the wake of their arrest and in the duration of their confinement up to the present. (TSN, January 22, 1991 pp. 2-4).

The Trial Court's Ruling

The trial court found Appellant Kulais guilty of five counts of kidnapping for ransom and one count of kidnapping a woman and public officer, for which offenses it imposed upon him six terms of "life imprisonment." It also found him guilty of two counts of slight illegal detention for the kidnapping of Monico Saavedra and Calixto Francisco. The trial court ratiocinated as follows:

"Principally, the issue here is one of credibility - both of the witnesses and their version of what had happened on December 12, 1988, to February 3, 1989. On this pivotal issue, the Court gives credence to [p]rosecution witnesses and their testimonies. Prosecution evidence is positive, clear and convincing. No taint of evil or dishonest motive was imputed or imputable to [p]rosecution witnesses. To this Court, who saw all the witnesses testify, [p]rosecution witnesses testified only because they were impelled by [a] sense of justice, of duty and of truth.

Contrarily, [d]efense evidence is weak, uncorroborated and consisted only of alibis. The individual testimonies of the nine accused dwell[t] principally on what happened to each of them on May 27, 28 and 29, 1990. None of the accused explained where he or she was on and from December 12, 1988, to February 3, 1989, when [p]rosecution evidence show[ed] positively seven of the nine accused were keeping the five or six hostages named by [p]rosecution evidence.

The seven accused positively identified to have been present during the course of the captivity of the five kidnap-victims-complainants are: (1) Jumatiya Amlani; (2) Jaliha Hussin; (3) Norma Sahiddan; (4) Jailon Kulais; (5) Hadjirul Plasin; (6) Salvador Mamaril and (7) Jainuddin Hassan.

The two accused not positively identified are: Freddie Manuel alias "Ajid", and Imam Taruk Alah. These two must, therefore, be declared acquitted based on reasonable doubt.

The next important issue to be examined is: Are these seven accused guilty as conspirators as charged in the eight Informations; or only as accomplices? Prosecution evidence shows that the kidnapping group to which the seven accused belonged had formed themselves into an armed band for the purpose of kidnapping for ransom. This armed band had cut themselves off from established communities, lived in the mountains and forests, moved from place to place in order to hide their hostages. The wives of these armed band moved along with their husbands, attending to their needs, giving them material and moral support. These wives also attended to the needs of the kidnap victims, sleeping with them or comforting them.

x x x x x x x x

II) The guilt of Jainuddin Hassan, Jailon Kulais, Salvador Mamaril and Hadjirul Plasin. The Court holds these four men guilty as conspirators in the 8 cases of kidnapping. Unlike the three women-accused, these male accused were armed. They actively participated in keeping their hostages by fighting off the military and CAFGUS, in transferring their hostages from place to place, and in guarding the kidnap hostages. Salvador Mamaril and Jailon Kulais were positively identified as among the nine armed men who had kidnapped the eight kidnap victims on December 12, 1988.

The higher degree of participation found by the Court of the four accused is supported by the rulings of our Supreme Court quoted below.

(1) The time-honored jurisprudence is that direct proof is not essential to prove conspiracy. It may be shown by a number of infinite acts, conditions and circumstances which may vary according to the purposes to be accomplished and from which may logically be inferred that there was a common design, understanding or agreement among the conspirators to commit the offense charged. (People vs. Cabrera, 43 Phil 64; People vs. Carbonel, 48 Phil. 868.)

(2) The crime must, therefore, in view of the solidarity of the act and intent which existed between the sixteen accused, be regarded as the act of the band or party created by them, and they are all equally responsible for the murder in question. (U.S. vs. Bundal, et. al. 3 Phil 89, 98.)

(3) When two or more persons unite to accomplish a criminal object, whether through the physical volition of one, or all, proceeding severally or collectively, each individual whose evil will actively contribute to the wrongdoing is in law responsible for the whole, the same as though performed by himself alone. (People vs. Peralta, et. al. 25 SCRA 759, 772 (1968).)[14]

The Assigned Errors

The trial court is faulted with the following errors, viz:

I

“The trial court erred in taking judicial notice of a material testimony given in another case by Lt. Melquiades Feliciano, who allegedly was the team leader of the government troops which allegedly captured the accused-appellants in an encounter; thereby, depriving the accused-appellants their right to cross-examine him.

II

On the assumption that Lt. Feliciano’s testimony could be validly taken judicial notice of, the trial court, nevertheless, erred in not disregarding the same for being highly improbable and contradictory.

III

The trial court erred in finding that accused-appellants Jumatiya Amlani, Jaliha Hussin and Norma Sahiddan provided Carlos Falcasantos, et. al., with material and moral comfort, hence, are guilty as accomplices in all the kidnapping for ransom cases.

IV

The trial court erred in denying to accused-appellant Jaliha Hussin and Norma Sahiddan the benefits of suspension of sentence given to youth offenders considering that they were minors at the time of the commission of the offense.”[15]

As earlier noted, Jumatiya Amlani, Jaliha Hussin and Norma Sahiddan had withdrawn their appeal, and as such, the third and fourth assigned errors, which pertain to them only, will no longer be dealt with. Only the following issues pertaining to Appellant Jailon Kulais will be discussed: (1) judicial notice of other pending cases, (2)

sufficiency of the prosecution evidence, and (3) denial as a defense. In addition, the Court will pass upon the propriety of the penalty imposed by the trial court.

The Court's Ruling

The appeal is bereft of merit.

First Issue:

Judicial Notice and Denial of Due Process

Appellant Kulais argues that he was denied due process when the trial court took judicial notice of the testimony given in another case by one Lt. Melquiades Feliciano, who was the team leader of the government troops that captured him and his purported cohorts.[16] Because he was allegedly deprived of his right to cross-examine a material witness in the person of Lieutenant Feliciano, he contends that the latter's testimony should not be used against him.[17]

True, as a general rule, courts should not take judicial notice of the evidence presented in other proceedings, even if these have been tried or are pending in the same court, or have been heard and are actually pending before the same judge.[18] This is especially true in criminal cases, where the accused has the constitutional right to confront and cross-examine the witnesses against him.

Having said that, we note, however, that even if the court a quo did take judicial notice of the testimony of Lieutenant Feliciano, it did not use such testimony in deciding the cases against the appellant. Hence, Appellant Kulais was not denied due process. His conviction was based mainly on the positive identification made by some of the kidnap victims, namely, Jessica Calunod, Armando Bacarro and Edilberto Perez. These witnesses were subjected to meticulous cross-examinations conducted by appellant's counsel. At best, then, the trial court's mention of Lieutenant Feliciano's testimony is a decisional surplusage which neither affected the outcome of the case nor substantially prejudiced Appellant Kulais.

Second Issue:

Sufficiency of Prosecution Evidence

Appellant was positively identified by Calunod, as shown by the latter's testimony:

“CP CAJAYON D MS:

Q

And how long were you in the custody of these persons?

A

We stayed with them for fifty-four days.

Q

And during those days did you come to know any of the persons who were with the group?

A

We came to know almost all of them considering we stayed there for fifty-four days.

Q

And can you please name to us some of them or how you know them?

A

For example, aside from Commander Falcasantos and Commander Kamlon we came to know first our foster parents, those who were assigned to give us some food.

Q

You mean to say that the captors assigned you some men who will take care of you?

A

Yes.

Q

And to whom were you assigned?

A

To Ila Abdurasa.

Q

And other than your foster [parents] or the parents whom you are assigned to, who else did you come to know?

A

Pagal and his wife; Tangkong and his wife Nana; the two (2) wives of Commander Falcasantos - Mating and Janira - another brother in-law of Commander Kamlon, Usman, the wife of Kamlon, Tira.

x x x x x x x x

Q

Now, you said that you were with these men for fifty-four days and you really came to know them. Will you still be able to recognize these persons if you will see the[m] again?

A

Yes, ma'am.

Q

Now will you look around this Honorable Court and see if any of those you mentioned are here?

A

Yes, they are here.

Q

Some of them are here?

A

Some of them are here.

x x x x x x x x

Q

Where is Tangkong? What is he wearing?

A

White t-shirt with orange collar. (witness pointing.) He was one of those nine armed men who took us from the highway.

RTC INTERPRETER:

Witness pointed to a man sitting in court and when asked of his name, he gave his name as JAILON KULAI.

CP CAJAYON D MS:

Q

Aside from being with the armed men who stopped the vehicle and made you alight, what else was he doing while you were in their captivity?

A

He was the foster parent of Armando Bacarro and the husband of Nana.

COURT:

Q

Who?

A

Tangkong.

x x x x x x x x"[19]

Likewise clear and straightforward was Bacarro's testimony pointing to appellant as one of the culprits:

"FISCAL CAJAYON:

x x x x x x x x

Q

And what happened then?

A

Some of the armed men assigned who will be the host or who will be the one [to] g[i]ve food to us.

Q

[To] whom were you assigned?

A

I was assigned to a certain Tangkong and [his] wife Nana.

x x x x x x x x

Q

Now, you said you were assigned to Tangkong and his wife. [D]o you remember how he looks like?

A

Yes.

Q

Now, will you please look around this Court and tell us if that said Tangkong and his wife are here?

A

Yes, ma'am.

Q

Could you please point this Tangkong to us?

A

Witness pointed to a person in Court. [W]hen asked his name he identified [himself] as Jailon Kulais.

Q

Why did you say his name is Tangkong? Where did you get that name?

A

Well, that is the name [by which he is] usually called in the camp.

x x x x x x x x

ATTY. FABIAN

(counsel for accused Kulais)

Q

When did you first meet Tangkong?

A

That was on December 11, because I remember he was the one who took us.

Q

When you were questioned by the fiscal a while ago, you stated that Mr. Mamaril was one of those who stopped the bus and took you to the hill and you did not mention Tangkong?

A

I did not mention but I can remember his face.

x x x x x x x x

Q

And because Tangkong was always with you as your host even if he did not tell you that he [was] one of those who stopped you, you would not recognize him?

A

No, I can recognize him because he was the one who took my shoes.

COURT:

Q

Who?

A

Tangkong, your Honor.

x x x x x x x x”[20]

Also straightforward was Ernesto Perez’ candid narration:

“FISCAL CAJAYON:

x x x x x x x x

Q

Who else?

A

The last man.

Q

Did you come to know his name?

A

Only his nickname, Tangkong. (Witness pointed to a man in Court who identified himself as Jailon Kulais.)

Q

And what was Tangkong doing in the mountain?

A

The same, guarding us.

CROSS-EXAMINATION BY ATTY. SAHAK

Q

Engr. Perez, you stated that you were ambushed by nine armed men on your way from [the] Licombo to [the] Talaga Foot Bridge. [W]hat do you mean by ambushed?

A

I mean that they blocked our way and stopped.

Q

They did not fire any shots?

A

But they were pointing their guns at us.

Q

And among the 9 armed men who held you on your way to [the] Talaga Footbridge, you stated [that] one of them [was] Commander Falcasantos?

A

Yes.

Q

Could you also recognize anyone of the accused in that group?

A

Yes.

Q

Will you please identify?

A

That one, Tangkong. (The witness pointed to a man sitting in court who identified himself as Jailon Kulais.)

x x x x x x x x

CROSS-EXAMINATION BY ATTY. FABIAN

Q

You said Jailon Kulais was among those who guarded the camp?

FISCAL CAJAYON:

Your Honor, please, he does not know the name of Julais, he used the word Tangkong.

ATTY. FABIAN

Q

You said Tangkong guarded you[. W]hat do you mean?

A

He guarded us like prisoners[. A]fter guarding us they have their time two hours another will be on duty guarding us.

Q

Where did you meet Tangkong?

A

He was one of the armed men who kidnapped us.

x x x x x x x x"[21]

It is evident from the foregoing testimonies of Calunod, Bacarro and Perez that kidnapping or detention did take place: the five victims were held, against their will, for fifty-three days from December 12, 1988 to February 2, 1989. It is also evident that Appellant Kulais was a member of the group of armed men who staged the kidnapping, and that he was one of those who guarded the victims during the entire period of their captivity. His participation gives credence to the conclusion of the trial court that he was a conspirator.

Kidnapping for Ransom

That the kidnapping of the five was committed for the purpose of extorting ransom is also apparent from the testimony of Calunod, who was quite emphatic in identifying the accused and narrating the circumstances surrounding the writing of the ransom letters.

"CP CAJAYON D MS:

Q

Now, you were in their captivity for 54 days and you said there were these meetings for possible negotiation with the City Government. What do you mean by this? What were you supposed to negotiate?

A

Because they told us that they will be releasing us only after the terms.[22]

Q

And what were the terms? Did you come to know the terms?

A

I came to know the terms because I was the one ordered by Commander Falcasantos to write the letter, the ransom letter.

Q

At this point of time, you remember how many letters were you asked to write for your ransom?

A

I could not remember as to how many, but I can identify them.

Q

Why will you be able to identify the same?

A

Because I was the one who wrote it.

Q

And you are familiar, of course, with your penmanship?

A

Yes.

Q

Now we have here some letters which were turned over to us by the Honorable City Mayor Vitaliano Agan. 1,2,3,4,5 - there are five letters all handwritten.

COURT:

Original?

CP CAJAYON D MS:

Original, your Honor.

Q

And we would like you to go over these and say, tell us if any of these were the ones you were asked to write.

A

(Witness going over [letters])

This one - 2 pages. This one - 2 pages. No more.

Q

Aside from the fact that you identified your penmanship in these letters, what else will make you remember that these are really the ones you wrote while there?

A

The signature is there.

Q

There is a printed name here[,] Jessica Calunod.

A

And over it is a signature.

Q

That is your signature?

A

Yes, ma'am.

Q

How about in the other letter, did you sign it also?

A

Yes, there is the other signature.

Q

There are names - other names here - Eddie Perez, Allan Basa, Armando Bacarro, Felix Rosario, Jojie Ortuoste and there are signatures above the same. Did you come up to know who signed this one?

A

Those whose signatures there were signed by the persons. [sic]

Q

And we have here at the bottom, Commander Kamlon Hassan, and there is the signature above the same. Did you come to know who signed it?

A

[It was] Commander Kamlon Hassan who signed that.

x x x x x x x x

Q

Jessica, I am going over this letter ... Could you please read to us the portion here which says the terms? ...

A

(Witness reading) "Mao ilang gusto nga andamun na ninyo and kantidad nga P100,000 ug P14,000 baylo sa 20 sets nga uniforms sa Biyernes (Pebrero 3, 1989)." [23]

x x x x x x x x

INTERPRETER (Translation):

"This is what they like you to prepare[:] the amount of P100,000.00 and P14,000.00 in exchange [for] 20 sets of uniform on Friday, February 3, 1989.

x x x x x x x x

Q

Now you also earlier identified this other letter and this is dated January 21, 1988. [style="color: rgb(255, 0, 0);">[24]] Now, could you please explain to us why it is dated January 21 1988 and the other one Enero 31, 1989 or January 31, 1989?

A

I did not realize that I placed 1989, 1988, but it was 1989.

Q

January 21, 1989?

A

Yes

x x x x x x x x

Q

Now, in this letter, were the terms also mentioned? Please go over this.

A

(Going over the letter)

Yes, ma'am.

Q

Could you please read it aloud to us?

A

(Witness reading)

“Gusto nila and P100,000.00 ng kapinan nu ug 20 sets nga completong uniformer (7 colors marine type wala nay labot ang sapatos), tunga medium ug tunga large size.”[25]

x x x x x x x x

INTERPRETER:

“They like the P100,000.00 and an addition of 20 sets of complete uniform (7 colors, marine-type not including the shoes), one half medium, one half large.”

x x x x x x x x

Q

After having written these letters, did you come to know after [they were] signed by your companions and all of you, do you know if these letters were sent? If you know only.

A

I would like to make it clear. The first letter was ordered to me by Falcasantos to inform the City Mayor that initial as P500,000.00, and when we were already - I was asked again to write, we were ordered to affix our signature to serve as proof that all of us are alive.”[26] [sic]

Calunod’s testimony was substantially corroborated by both Armando Bacarro[27] and Edilberto Perez.[28] The receipt of the ransom letters, the efforts made to raise and deliver the ransom, and the release of the hostages upon payment of the money were testified to by Zamboanga City Mayor Vitaliano Agan[29] and Teddy Mejia.[30]

The elements of kidnapping for ransom, as embodied in Article 267 of the Revised Penal Code,[31] having been sufficiently proven, and the appellant, a private individual, having been clearly identified by the kidnap victims, this Court thus affirms the trial court’s finding of appellant’s guilt on five counts of kidnapping for ransom.

Kidnapping of

Public Officers

Victims Virginia San Agustin-Gara, Monico Saavedra and Calixto Francisco were members of the government monitoring team abducted by appellant’s group. The three testified to the fact of kidnapping; however, they were not able to identify the appellant. Even so, appellant’s identity as one of the kidnappers was sufficiently established by Calunod, Bacarro and Perez, who were with Gara, Saavedra and Francisco when the abduction occurred.

That Gara, Saavedra and Francisco were detained for only three hours[32] does not matter. In *People vs. Domasian*,[33] the victim was similarly held for three hours, and was released even before his parents received the ransom note. The accused therein argued that they could not be held guilty of kidnapping as no enclosure was involved, and that only grave coercion was committed, if at all.[34] Convicting appellants of kidnapping or serious illegal detention under Art. 267 (4) of the Revised Penal Code, the Court found that the victim, an eight-year-old boy, was deprived of his liberty when he was restrained from going home. The Court justified the

conviction by holding that the offense consisted not only in placing a person in an enclosure, but also in detaining or depriving him, in any manner, of his liberty.[35] Likewise, in *People vs. Santos*,[36] the Court held that since the appellant was charged and convicted under Article 267, paragraph 4, it was not the duration of the deprivation of liberty which was important, but the fact that the victim, a minor, was locked up.

Thus, in the present case, the detention of Gara, Saavedra and Francisco for only a few hours is immaterial. The clear fact is that the victims were public officers[37] -- Gara was a fiscal analyst for the City of Zamboanga, Saavedra worked at the City Engineer's Office, and Francisco was a barangay councilman at the time the kidnapping occurred. Appellant Kulais should be punished, therefore, under Article 267, paragraph 4 of the Revised Penal Code, and not Art. 268, as the trial court held.

The present case is different from *People vs. Astorga*,[38] which held that the crime committed was not kidnapping under Article 267, paragraph 4, but only grave coercion. The appellant in that case had tricked his seven-year-old victim into going with him to a place he alone knew. His plans, however, were foiled, when a group of people became suspicious and rescued the girl from him. The Court noted that the victim's testimony and the other pieces of evidence did not indicate that the appellant wanted to detain her, or that he actually detained her.

In the present case, the evidence presented by the prosecution indubitably established that the victims were detained, albeit for a few hours. There is proof beyond reasonable doubt that kidnapping took place, and that appellant was a member of the armed group which abducted the victims.

Third Issue:

Denial and Alibi

The appellant's bare denial is a weak defense that becomes even weaker in the face of the prosecution witnesses' positive identification of him. Jurisprudence gives greater weight to the positive narration of prosecution witnesses than to the negative testimonies of the defense.[39] Between positive and categorical testimony which has a ring of truth to it on the one hand, and a bare denial on the other, the former generally prevails.[40] Jessica Calunod, Armando Bacarro and Edilberto Perez testified in a clear, straightforward and frank manner; and their testimonies were compatible on material points. Moreover, no ill motive was attributed to the kidnap victims and none was found by this Court.

We agree with the trial court's observation that the appellant did not meet the charges against him head on. His testimony dwelt on what happened to him on the day he was arrested and on subsequent days thereafter. Appellant did not explain where he was during the questioned dates (December 12, 1988 to February 3, 1989); neither did he rebut Calunod, Bacarro and Perez, when they identified him as one of their kidnappers.

Reclusion Perpetua, Not Life Imprisonment

The trial court erred when it sentenced the appellant to six terms of life imprisonment. The penalty for kidnapping with ransom, under the Revised Penal Code, is reclusion perpetua to death. Since the crimes happened in 1988, when the capital penalty was proscribed by the Constitution, the maximum penalty that could have been imposed was reclusion perpetua. Life imprisonment is not synonymous with reclusion perpetua. Unlike life imprisonment, reclusion perpetua carries with it accessory penalties provided in the Revised Penal Code and has a definite extent or duration. Life imprisonment is invariably imposed for serious offenses penalized by special laws, while reclusion perpetua is prescribed in accordance with the Revised Penal Code.[41]

WHEREFORE, the conviction of Appellant Jailon Kulais as principal in five counts of kidnapping for ransom and

in three counts of kidnapping is AFFIRMED, but the penalty imposed is hereby MODIFIED as follows: Appellant is sentenced to five terms of reclusion perpetua, one for each of his five convictions for kidnapping for ransom; and to three terms of reclusion perpetua, one each for the kidnapping of Public Officers Virginia Gara, Monico Saavedra and Calixto Francisco. Like the other accused who withdrew their appeals, he is REQUIRED to return the personal effects, or their monetary value, taken from the kidnap victims. Additionally, he is ORDERED to pay the amount of P122,000 representing the ransom money paid to the kidnappers. Costs against appellant. SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug, and Quisumbing, JJ., concur.

[1] These Informations were signed by Zamboanga City First Assistant Prosecutor Manuel Tatel and approved by City Prosecutor Wilfredo M. Yu.

[2] Referred to as “Jaliha Hussin” in the Decision.

[3] Also referred to as “Iman.”

[4] Record, p. 1; ALLAN BASA in Crim. Case No. 10061, record, p.1; EDILBERTO PEREZ y SALVADOR in Crim. Case No. 10062, record, p.1; JESSICA S. CALUNOD in Crim. Case No. 10063, record, p. 1; ARMANDO O. BACARRO in Crim. Case No. 10064, record, p. 1. Brackets supplied.

[5] Ibid.

[6] Ibid.

[7] Record, p. 1; VIRGINIA SAN AGUSTIN GARA, a female public officer, in Crim. Case No. 10066, record, p. 1; CALIXTO FRANCISCO in Crim. Case No. 10067, record, p. 1. Brackets supplied.

[8] See Decision, p. 3. Although the trial court listed the nine arrested accused, it erroneously wrote that there were only eight of them.

[9] Decision, pp. 33-36; rollo, pp. 52-55.

[10] Through Atty. Catherine P.C. Fabian of the Public Attorney’s Office, who represented them during the trial

[11] The case was deemed submitted for resolution on February 21, 1997, when the Court received a letter from the Bureau of Corrections confirming the confinement of Appellant Jailon Kulais at the NBP.

[12] Appellee’s Brief, pp. 8-10; rollo, pp. 149h-149j.

[13] Appellant’s Brief, prepared by the Public Attorney’s Office and signed by Public Attorney III Bartolome P. Reus and Public Attorney II Rector E. Macapagal, pp. 8-11; rollo, pp. 92-95.

[14] Decision, pp. 29-33.

[15] Appellant’s Brief, pp. 1-2; rollo, pp. 85-86.

[16] Appellant’s Brief, p. 11; rollo, p. 95.

[17] Ibid., p. 12; rollo, p. 96.

[18] Tabuena vs. Court of Appeals, 196 SCRA 650, May 6, 1991. See also Occidental Land Transportation Co., Inc. vs. Court of Appeal, 220 SCRA 167, March 19, 1993.

[19] TSN, October 22, 1990, pp. 8-11. Italics supplied.

[20] TSN, October 23, 1990, pp.9 and 25. Italics supplied.

[21] TSN, October 24, 1990, pp.18-23. Italics supplied.

[22] TSN, October 22, 1990, p.13. Italics supplied.

[23] This letter, dated January 31, 1989 and consisting of two pages, was marked Exh. "A" and "A-1"; Jessica Calunod's signature thereon was marked Exh. "A-2." This quoted portion was marked Exh. "A-3."

[24] This letter, dated January 21, 1989, was marked Exh. "B"; the second page thereof, Exh. "B-1," and Jessica Calunod's signature, Exh. "B-2."

[25] This portion was marked Exh. "B-3."

[26] TSN, October 22, 1990, p.13.

[27] TSN, October 23, 1990, pp. 10-11. During his testimony, Bacarro confirmed that Jessica Calunod and Engineer Perez were made to write ransom letters, and that he, along with the other hostages, was made to sign the letters. He also identified another letter, marked as Exh. "D," dated January 15, 1988 and addressed to Mayor Vitaliano Agan. Written in response to the mayor's request to reduce the ransom money from P500,000 to P350,000, this letter stated that Commander Falcasantos did not want to reduce the aforesaid amount, but he agreed to the reduced amount of P450,000, as he took pity on the plight of the hostages.

[28] TSN, October 24, 1990 pp. 13-15. Perez stated that he also wrote a ransom letter and identified the same; he also confirmed that Jessica Calunod likewise wrote ransom notes, and that he and all the other hostages were asked to sign them,.

[29] TSN, December 11, 1990. Mayor Agan testified that he received ransom letters; that he facilitated their delivery to the kidnappers; and that upon payment of the ransom money, the kidnap victims were released.

[30] TSN, November 7, 1990, pp. 2-7. Mr. Mejia testified that he was one of those who delivered the money to the kidnappers and witnessed the release of the victims.

[31] "Art 267. Kidnapping and serious illegal detention. Any private individual who shall detain or kidnap another, or in any other manner, deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

1. If the kidnapping or detention shall have lasted more than five days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, female or public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense." (This definition has been amended by Section 8, RA No. 7659, effective December 31, 1993. The crimes happened in 1988.)

[32] TSN, November 6, 1990, p. 9.

[33] 219 SCRA 245, March 1, 1993.

[34] Ibid., p. 250.

[35] *Ibid.*, p. 253.

[36] GR No. 117873, December 22, 1997. Citing Ramon C. Aquino, *The Revised Penal Code*, 1988 ed., Vol. III, pp. 1-2, the Court said that the Spanish version of Art. 267 of the Revised Penal Code uses the terms “lock-up” (*encerrar*) rather than “kidnap” (*sequestar* or *raptar*). “Lockup” is included in the broader term “detention,” which refers not only to the placing of a person in an enclosure which he cannot leave, but also to any other deprivation of liberty.

[37] Art. 203, Revised Penal Code, provides:

“Art. 203. Who are public officers. For the purpose of applying the provisions of this and the preceding titles of this book, any person who, by direct provision of law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class, shall be deemed to be a public officer.”

In defining “public officers,” former Chief Justice Ramon C. Aquino cited *Maniego vs. People*, in which the Court held: “The definition of public officer in Art. 203 is quite comprehensive, embracing as it does every public servant from the lowest to the highest. It obliterates the distinction between officer and employee in the law of public officers, it does not distinguish between permanent and temporary employees xxx.” He likewise presented a list of persons held to be public officers in various cases, e.g. a customs secret service agent, a public works inspector, a sanitary officer, a barrio lieutenant, a laborer discharging clerical functions, an emergency helper in the Bureau of Forestry on a daily wage basis, performing the duties of janitor and messenger. See Ramon C. Aquino, *Revised Penal Code*, 1997 ed., Vol. II, pp. 409-410.

[38] GR No. 110097, December 22, 1997.

[39] *People vs. Angeles*, 218 SCRA 352, February 2, 1993; *People vs. Guibao* 217 SCRA 64, January 15, 1993; *People vs. Mendoza*, 210 SCRA 517, June 26, 1992; *People vs. Bausang*, 199 SCRA 355, July 18, 1991; *People vs. Bacatcat*, 188 SCRA 175, July 31, 1990.

[40] *People vs. Waggay*, 218 SCRA 742, February 9, 1993; *People vs. Andasa*, 206 SCRA 636, February 27, 1992.

[41] *People vs. Layno*, GR No. 110833, November 21, 1996; *People vs. Magana*, GR No. 105673, July 26, 1996; *People vs. Gregorio*, 255 SCRA 380, March 29, 1996; *People vs. Magalong*, 244 SCRA 117, May 12, 1995. See *People vs. Samson*, 244 SCRA 146, May 16, 1995. *NOTA BENE*: It is noteworthy that Appellant Kulais was also the appellant in this cited case. He appealed the Decision of the Regional Trial Court of Zamboanga City, Branch 12, presided by Judge Pelagio S. Mandi who penned the Decision appealed in the present case. In that case, Kulais was convicted of kidnapping with ransom for the abduction of one Airman Ruben Monteverde, committed on January 30, 1990. The persons he was charged with were the same ones he was charged and convicted with in the case at bar. See also *People vs. Ramos, Jr.*, 203 SCRA 237, October 28, 1991; and *People vs. Baguio*, 196 SCRA 459, April 30, 1991.

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